

BILL ANALYSIS

S.B. 843

By: Uribe

Senate Bill Analysis
Senate Jurisprudence Committee
6-15-89
Enrolled

BACKGROUND

Solicitation of employment by attorneys is currently regulated by the disciplinary rules of the Texas Code of Professional Responsibility and the barratry statute (Section 38.12, Penal Code, V.T.C.S., violation of which is punishable as a Class A misdemeanor). Barratry is generally defined as the offense of frequently exciting and stirring up quarrels and suits. One of the primary purposes of regulation in this area is to prevent attorneys from soliciting accident victims as clients and to protect persons in emotional distress from being subjected to overreaching by unscrupulous attorneys.

There has been growing concern regarding the regulation and punishment of in-person solicitation by attorneys or their agents at the scene of an accident, at hospitals, or at funeral parlors, where victims and relatives of victims often suffer from extreme emotional distress. A complete ban of such solicitations has been upheld by the United States Supreme Court. Zauderer v. Office of Disciplinary Counsel of the Supreme Court of Ohio, 471 U.S. 626, 641-42, 105 S.Ct. 2265, 2276-77 (1985); Ohralik v. Ohio State Bar Association, 436 U.S. 447, 98 S.Ct. 1912 (1978).

PURPOSE

As proposed, S.B. 843 creates new law and amends existing law to reclassify certain barratry offenses and the respective periods of suspension from practicing law for convicted offenders.

EFFECT ON CURRENT LAW

Amends the Penal Code, <<38.01 and 38.12; adds new <<82.065 and 82.066 to the Government Code.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 38.01, Penal Code, to add the definitions of "economic benefit," "funeral establishment," "hospital," "member of the family," "qualified nonprofit organization," and "solicit."

SECTION 2. Amends Section 38.12, Penal Code, as follows:

Sec. 38.12. (a) Provides that barratry is committed if the listed acts provided in this subsection are performed with an intent to obtain an economic benefit.

(b) Sets forth the circumstances under which intent to obtain an economic benefits is presumed.

(c) Provides that an offense under Subsection (a) is a Class A misdemeanor, except as provided by Subsection (d).

(f) Provides that a landlord and a tenant may agree that the tenant must repair or remedy certain conditions. Provides that this subsection does not affect the landlord's duties under Subchapter B.

SECTION 2. Amends Section 92.007, Property Code, to provide that venue for an action under this chapter is in the county in which the dwelling is located.

SECTION 3. Amends Subsection (b), Section 92.052, Property Code, to provide that, unless caused by normal wear and tear, the landlord does not have the duty to repair conditions caused by the tenant, his family, guests, or a lawful occupant.

SECTION 4. Amends Subsection (c), Section 92.055, Property Code, to set forth the remedies available if the landlord gives the tenant notice of closing the rental unit.

SECTION 5. Amends Section 92.056, Property Code, as follows:

(a) Requires the landlord to repair or remedy a condition, and provides that the landlord is liable to a tenant as provided by this subchapter if:

- 1) the condition materially affects physical health or safety;
- 2) the tenant has given the landlord notice to repair;
- 3) the landlord has had reasonable time to repair;
- 4) the tenant has given subsequent notice that he intends to pursue his remedies;
- 5) the landlord has not made a diligent effort to repair; and
- 6) the tenant was not delinquent in rent at the time of notice.

(b) Sets forth remedies for a tenant to whom a landlord is liable under Subsection (a) of this section, as follows:

- 1) terminate the lease if not repaired within 7 days of notice to terminate;
- 2) have the condition repaired pursuant to <92.0561;
- 3) deduct the cost of the repair from the rent; and
- 4) obtain judicial relief.

(c) Provides that a tenant is entitled to receive a pro rata refund on their rent, and deduct the security deposit from the rent, but is not entitled to take advantage of the other repair and deduct remedies when electing to terminate the lease under Subsection (b) of this section.

SECTION 6. Amends Subchapter B, Chapter 92, Property Code, by adding Section 92.0561, as follows:

Sec. 92.0561. (a) Allows the tenant to have a condition repaired or remedied and to deduct the cost from a rent payment if the landlord is liable under Section 92.056a.

(b) Prohibits the tenant's deduction from exceeding one month's rent. Provides an exception for and sets forth procedures for tenants paying subsidized rent.

(c) Provides that repairs and deductions may be made as often as necessary so long as the deductions each month do not exceed one month's rent.

(d) Requires repairs made under this section to meet certain requirements, as follows:

- 1) the landlord's duty to repair has not been waived.
- 2) the tenant has given the proper notices.
- 3) certain physical conditions exist.

(e) Sets forth time guidelines for repairing or remedying a condition, provided that the requirements of Subsection (d) of this section are met.

(f) Requires a repair made pursuant to the tenant's notice to be made by a company, contractor, or repairman listed in the telephone directory or in the classified advertisements. Prohibits repairs from being made by certain persons related to the tenant unless the landlord and tenant agree. Prohibits repairs to the foundation or load-bearing structural elements if the building contains two or more dwelling units.

(g) Provides for the repair or remedy of a condition by the tenant, at the landlord's expense, if they mutually agree on the repair or remedy.

(h) Requires repairs made pursuant to the tenant's notice to be made in compliance with building codes.

(i) Prohibits a tenant from contracting for labor or materials in excess of deductions allowed in this section. Exempts landlords from liability to certain persons with whom a tenant has contracted. Prohibits a repairman or supplier from having a lien for materials or services arising out of repairs contracted for by the tenant under this section.

(j) Requires the tenant to include a copy of the repair bill and the receipt for its payment when deducting the cost of repairs from the rent.

(k) Provides that the landlord is liable for costs incurred by the tenant for a repairman's trip charge under certain conditions.

SECTION 7. Amends Subchapter B, Chapter 92, Property Code, by adding Section 92.0562, as follows:

(a) Requires the tenant to delay contracting for repairs under Section 92.0561 if an affidavit which complies with this section is delivered to the tenant before the tenant contracts for the repairs.

(b) Requires the affidavit to summarize the reasons for delay and the landlord's diligent efforts to get the repairs done.

(c) Sets forth time delays authorized by affidavits under this section based on certain grounds.

(d) Provides that affidavits for delay based on grounds other than those listed in Subsection (c) are unlawful and of no effect. Allows the landlord to file subsequent affidavits, but prohibits the total delay of the repair or remedy from extending longer than six months from the date of the first affidavit.

(e) Requires the affidavit to be delivered by personal delivery, certified mail, or by leaving the notice inside the dwelling if authorized by the lease.

(f) Requires affidavits for delay to be submitted in good faith and requires continued diligent efforts to repair or remedy the condition. Provides for a rebuttable presumption that the landlord acted in good faith and with continued diligence for the first affidavit delay. Provides that the landlord bears the burden of pleading and proving good faith and

continued diligence for subsequent affidavits for delay. Sets forth liability of the landlord who violates this section.

(g) Sets forth rights of a tenant and procedures for a tenant to follow when a new landlord, in good faith and without knowledge of a tenant's notice of intent to repair, has acquired title to the tenant's dwelling.

SECTION 8. Amends Subchapter B, Chapter 92, Property Code, by adding Section 92.0563, as follows:

Sec. 92.0563. (a) Sets forth a tenant's judicial remedies under Section 92.056, as follows:

- 1) an order directing the landlord to take steps to repair;
- 2) an order reducing the rent in proportion to the reduced rental value;
- 3) judgment against the landlord for one month's rent, plus \$500;
- 4) judgment against the landlord for the tenant's actual damages; and
- 5) costs and attorney's fees.

(b) Provides that a landlord who knowingly violates Section 92.006 by contracting with a tenant to waive the landlord's duty to repair under this subchapter is liable to the tenant for actual damages, one month's rent plus \$2,000, and attorney's fees. Sets forth procedures for a tenant to plead and prove a knowing violation.

(c) Provides that the justice, county, and district courts have concurrent jurisdiction of an action under Subsection (a) of this section. Prohibits a justice court from ordering repairs under Subdivision (1) of Subsection (a) of this section.

SECTION 9. Amends Subsections (b) and (d), Section 92.057, Property Code, to make conforming language changes.

SECTION 10. Amends Section 92.058(a) and adds (c), Property Code, as follows:

Sec. 92.058. (a) Allows a landlord to recover actual damages from the tenant if the tenant withholds rent, causes repairs to be performed, or makes rent deductions for repairs in violation of this subchapter. Sets forth procedures for notifying and recovering damages and a civil penalty under certain conditions.

(c) Provides that the landlord has the burden of pleading and proving that the required notice of the illegality was given to the tenant and that the tenant's violation was done in bad faith. Provides that the prevailing party in litigation under this subsection recovers reasonable attorney's fees from the nonprevailing party.

SECTION 11. Amends Section 92.059, Property Code, to provide that retaliation by the landlord pursuant to <92.057 and a lawful rent deduction pursuant to <92.0561 are both defenses for nonpayment of rent in an eviction suit. Prohibits other judicial actions under this subchapter from being joined with an eviction suit or asserted as a defense or crossclaim in an eviction suit.

SECTION 12. Amends Chapter 92, Property Code, by adding Subchapter G, as follows:

SUBCHAPTER G. UTILITY CUTOFF

Sec. 92.301. (a) Provides that a landlord who has agreed in the lease to furnish and pay for water, gas, or electric service to the tenant's dwelling is liable to the tenant if the

service is cut off or if the company has given written notice to the tenant that such utility service is about to be cut off because of nonpayment of the bill by the landlord.

(b) Sets forth actions that a tenant may take if a landlord is liable to the tenant under Subsection (a) of this section.

(c) Requires a tenant to submit a receipt from the utility company when deducting for the tenant's payment of the landlord's utility bill.

(d) Provides for the effective date of the tenant's remedies and sets forth conditions under which the tenant's remedies cease.

SECTION 13. (a) Provides that this Act applies to residential leases entered into or renewed after August 31, 1989, except as provided by Subsection (b).

(b) Provides that it is not a violation of this subchapter for a tenant and landlord to agree, in a residential lease executed or renewed before March 1, 1990, that the tenant has the duty to repair or remedy certain conditions if they occur during the lease term or a renewal or extension.

(c) Allows a landlord to enter into an agreement under Subsection (b) under certain conditions.

SECTION 14. Emergency clause.

Effective date: upon passage.